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Senate Bill \_\_\_\_\_  
By \_\_\_\_\_

House No. HB1399  
By Buck

AN ACT to amend Tennessee Code Annotated, Title 56, Chapter 7, Part 12, relative to uninsured motorists.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 7, Part 12, is amended by deleting the part in its entirety and by substituting instead the following:

Section 56-7-12\_\_\_. This act shall be known as "The Tennessee Uninsured Motorist Act of 1995" and shall be referred to herein simply as the "Act."

Section 56-7-12\_\_\_. This Act is designed to set out a statutory scheme to provide uninsured motorist protection to innocent victims of negligent drivers who have insufficient insurance coverage to adequately compensate the victims for their injuries, losses, and damages arising from an accident.

Section 56-7-12\_\_\_. Every uninsured motorist policy or contract issued in this state shall conform to the requirements of this Act, but nothing contained herein shall prevent any insurer from affording its insureds more

favorable uninsured motorist terms and conditions than is provided hereunder. Any provision of an uninsured motorist policy which provides less favorable uninsured motorist terms and conditions than provided by this Act shall be amended to comply with this Act.

Section 56-7-12\_\_\_. For the purposes of this Act:

(1) "Bodily Injury" means bodily harm, sickness, disease, loss of consortium, loss of services, death or any and all compensatory damages generally recoverable from a tortfeasor.

(2) "Business" means trade, profession, or occupation.

(3) "Collectible" means collected.

(4) "Compensatory Damages" means any and all damages generally recoverable from a tortfeasor other than punitive or exemplary damages.

(5) "Named Insured" means a person or entity in whose name the motor vehicle policy is issued.

(6) "Insured" for uninsured motorist purposes shall mean any person entitled to protection under this Act or any policy, policies, or coverage issued pursuant thereto, including any person related by blood, marriage or adoption, including a ward or foster child, who is a household resident of the named insured.

(7) "Motor Vehicle" means every vehicle which is self-propelled or every vehicle which is propelled by electric power or both, or any part thereof.

(8) "Occupant" means any individual in, on or about a motor vehicle.

(9) "Operator" means every person who drives or is in actual physical control of a motor vehicle or who is exercising control over or steering a vehicle being towed by a motor vehicle.

(10) "Owner" means a person who holds the legal title of a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof, with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such a conditional vendee or lessee or mortgagor shall be deemed to be owner for the purpose of this chapter.

(11) "Pedestrian" means any person afoot, or who is not an occupant as defined herein.

(12) "Property Damage" means damage to or destruction of:

(A) Any insured motor vehicle owned by the named insured or his spouse, if a resident of same household.

(B) Any other personal property other than a motor vehicle owned by an Insured.

(13) "Underinsured Motor Vehicle" means as uninsured motor vehicle.

(14) "Uninsured Motor Vehicle" means a motor vehicle whose ownership, maintenance, or use has resulted in the bodily injury or damage to property of an insured, and for which the sum

of the limits of liability insurance available to the insured under all valid and collectible insurance policy or policies, bonds, and securities applicable to the bodily injury or damage to property is less than the applicable limits of uninsured motorist coverage provided to the insured under the policy against which the claim is made. However, "uninsured motor vehicle" shall not include a motor vehicle:

(A) Owned by any governmental entity;

(B) Designed for use mainly off of public roads except while on public roads; or

(C) While located for use as a residence or premises.

Section 56-7-12\_\_\_. (a). Every motor vehicle liability insurance policy delivered, issued for delivery or renewed in this state, covering liability arising out of the ownership, maintenance or use of any motor vehicle designed for use primarily on public roads and registered or principally garaged in this state, shall include uninsured motorist coverage, subject to provisions filed with and approved by the commissioner of commerce and insurance, for the protection of persons insured thereunder who are legally entitled to recover compensatory damages from owners or operators of uninsured motor vehicles' because of bodily injury or death.

(i) The limits of such uninsured motorist coverage shall be equal to the bodily injury liability insurance limits stated in the policy.

(ii) Provided, however, that any named insured may reject in writing such uninsured motorist coverage completely or select lower limits of such coverage but not less than the minimum coverage limits in §55-12-107. Any

document signed by the named insured which initially rejects such coverage or selects lower limits shall be binding upon every insured to whom such policy applies and shall be conclusively presumed to be a part of the policy or contract when issued or delivered, and a copy shall be physically attached to the policy or contract. Unless the named insured subsequently requests such coverage in writing, the rejected coverage need not be included in or supplemental to any continuation, renewal, reinstatement, or replacement of such policy, or the transfer of vehicles insured thereunder, where the named insured had rejected the coverage in connection with a policy previously issued by the same insurer; provided, however, that whenever a new application is submitted in connection with any renewal, reinstatement or replacement transaction the provisions of this section shall apply in the same manner as when a new policy is being issued.

(iii) Any excess or umbrella insurance policy that includes automobile liability insurance shall comply with the provisions of this section so long as the underlying limits of uninsured motorist coverage are equal to the underlying limits of automobile liability insurance.

(b) The following priorities apply to types of coverage for bodily injury or death;

(I) With respect to bodily injury to an insured at a time when such insured is not occupying any motor vehicle, the insurance on the vehicle owned by the insured that provides the highest limits of uninsured motorist coverage shall apply, together with any excess or umbrella policy coverage available. If the insured does not own a vehicle, the insurance on any vehicle that provides the highest limits of uninsured motorist coverage for the insured shall apply, along with any additional coverage under an excess or umbrella policy which may be available.

(2) With respect to bodily injury to an insured while occupying a motor vehicle owned by such insured, only the limits of uninsured motorist coverage on the vehicle in which the insured was an occupant shall apply. The limits of uninsured motorist coverage shall not be increased because of multiple motor vehicles whether covered under a single policy or multiple policies, and in no event shall the total amount of recovery from all policies and bonds, including any amount recovered under the insured's uninsured motorist coverage, exceed the limits of the insured's primary uninsured motorist coverage together with any additional coverage under any excess or umbrella policies available.

(3) With respect to bodily injury to an insured while occupying an automobile not owned by the insured, the following priorities of recovery under uninsured motorist coverage shall apply:

(A) The uninsured motorist coverage on the vehicle in which the insured was an occupant shall be the primary uninsured motorist coverage;

(B) Should that primary uninsured motorist coverage be exhausted due to the extent of compensatory damages, then the insured may also recover from the insurance on the vehicle owned by the insured that provides the highest limits of uninsured motorist coverage, together with any excess or umbrella policy coverage also available. If the insured does not own a vehicle, the insured may recover as excess from the insurance that provides the highest limits of uninsured motorist coverage. In no instance shall more than one coverage from more than one uninsured motorist policy be available as excess over and above the primary coverage available to the injured occupant, except where excess or umbrella policy coverage is also available to the injured occupant.

(C) Every insured purchasing uninsured motorist bodily injury coverage shall be provided an opportunity to include uninsured motorist property damage coverage, subject to provisions filed with and approved by the commissioner of commerce and insurance, applicable to losses in excess of two hundred dollars (\$200) However, the deductible of two hundred dollars (\$200) shall not apply if:

(i) The vehicle involved in the accident is insured by the same insurer for both collision and uninsured motorist property damage coverage; and

(ii) The operator of the other vehicle has been positively identified and is liable. No insurer shall be required to offer limits of such property damage coverage greater in amount than the property damage liability limits purchased by the insured. After such uninsured motorist property damage coverage has been made available to an insured one (1) time and has been rejected in writing by the named insured, it need not again be made available in any continuation, renewal, reinstatement, or replacement of such policy, or the transfer of vehicles insured thereunder, unless the insured makes a written request for such coverage; provided, however, that whenever a new application is submitted in connection with any renewal, reinstatement, or replacement transaction, the provisions of this section shall apply in the same manner as when a new policy is being issued.

(D) The limit of liability for an insurer providing uninsured motorist coverage under this section is the amount of that coverage as specified in the policy less the sum collectible under all liability and/or primary uninsured motorist

insurance policies, bonds, and securities applicable to the bodily injury or death of the insured.

(E) If the owner or operator of any motor vehicle which causes bodily injury or property damage to the insured is unknown, the insured shall have no right to recover under the uninsured motorist provision unless:

(i) (A) Actual physical contact shall have occurred between the motor vehicle owned or operated by such unknown person and the person or property of the insured; or

(B) The existence of such unknown motorist is established by clear and convincing evidence.

(ii) The insured or someone in his behalf shall have reported the accident to an appropriate law enforcement agency within a reasonable time after its occurrence; and

(iii) The insured was not negligent in failing to determine the identity of the other vehicle and the owner or operator of the other vehicle at the time of the accident.

(F) No insurer shall increase the automobile insurance rate or premium of an insured with uninsured motorist coverage nor cancel such coverage due solely to the payment of any claim under uninsured motorist coverage.

(G) Failure of the motorist from whom the insured is legally entitled to recover damages to file the appropriate forms required by the department of safety pursuant to the Financial Responsibility Law, compiled in Title 55, Chapter 12, within ninety (90) days of the accident date shall create a rebuttable presumption that such motorist was uninsured at the time of such accident. Provided, however, after the ninety (90) days and upon paying a fee as set by



the department of safety, the commissioner shall issue a certified affidavit indicating whether such forms have been filed.

Section 56-7-12\_\_ . An insurer's insolvency protections shall be applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect where the liability insurer of the tortfeasor becomes insolvent. Nothing herein shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to its insureds than is provided hereunder.

Section 56-7- \_\_. (a). In the event of payment to any person under the coverage required by this Act, and subject to the terms and conditions of such coverage, the insurer making such payment shall, to the extent of such payment, be subrogated to all of the rights of the person to whom such payment has been made and shall be entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury or property damage for which payment was made, including the proceeds recoverable from the assets of an insolvent insurer.

(b). Payment by an insurer under this Act shall not constitute a satisfaction of the liability of the party or parties responsible for such bodily injury or property damage under the financial responsibility laws of this state.

(c). Any insured intending to rely upon the coverage required by this part shall not settle a claim against the person legally responsible for the bodily injury or property damage without a written agreement from their uninsured motorist and/or underinsured motorist carrier consenting to the settlement and expressly waiving any subrogation rights, except as otherwise provided herein.

(d). When an insured plaintiff notifies the underinsured carrier(s) that the insured has received a written offer to settle for the limits of liability insurance

coverage which are available to the underinsured defendant, any party may, within ninety (90) days, discover the assets, liabilities, and liability insurance of or available to the defendant. No information discovered under this subsection may be disclosed during any trial concerning compensatory damages only.

(e). Unless otherwise agreed to by the underinsured defendant, no offer of settlement tendered by the defendant's liability insurance carrier shall excuse its contractual obligation and duty to defend. Provided, however, that at the expiration of the ninety (90) day period referred to in subsection D above, or such additional time as the Court may allow for good cause shown, the underinsured carrier(s) will become responsible for all reasonable defense costs, including but not limited to reasonable attorney fee and court cost that are incurred by the liability carrier(s) following the expiration of such period if a judgment is entered against the underinsured defendant in an amount equal to or greater than the settlement offer.

Nothing herein is intended to restrict or prevent the primary or underlying carrier, having offered its limits of liability, and with the permission of its insured and/or insureds, from tendering the defense of the case to the underinsured motorist carrier and relieving itself from its duty to defend if such tender is accepted.

Section 56-7-12\_\_\_. Forms of coverage under this Act may include such terms, exclusions, limitations, conditions, and offsets which are designed to avoid duplication of insurance and other benefits. However, an uninsured motorist policy may not (a) reduce the applicable limit of liability by any amount collectible under a worker's compensation law or similar law if the law of the State applicable to the worker's compensation claim provides a statutory right of subrogation for payments made by the worker's compensation carrier; (b) reduce the applicable limit of liability by any amount

collectible under any disability benefits law or policy or health, hospitalization or like policies if the insured, or someone on his behalf, paid, directly or indirectly, in whole or in part, for the benefits collectible under said law or policy; or (c) reduce the applicable limit of liability by any amount collectible from any non-motorist joint tortfeasor or his insurer.

Section 56-7-12\_\_.

(a) Any insured intending to rely on the coverage required by this Act shall file a cause of action against the owner and/or operator of the uninsured motor vehicle and against the insurance company or companies issuing the policy or policies. The insurance company or companies providing uninsured motorist coverage shall be named as a party defendant, shall file responsive pleadings in its own name, and

(1) take such action allowable by law in the name of the owner and/or operator of the uninsured motor vehicle, or

(2) may, at its choice only, defend solely in its own name; provided, however, that nothing in this subsection shall prevent such owner or operator from employing counsel of his own choice to proceed to file pleadings and defend on such owner or operator's behalf. The insurance company or companies providing uninsured motorist coverage shall, within ninety (90) days after filing an answer, make the election of defending said action in the name of the owner and/or operator of the uninsured motor vehicle or in its own name, unless granted additional time by the court. Provided, however, the insurance carrier, upon motion and good cause shown, may be allowed to amend its election and defend in its own name. A complaint filed by any insured relying upon the uninsured motorist coverage shall state clearly on the record the cause of action, including the reliance upon uninsured motorist coverage, however,

the identity or existence of the uninsured motorist insurance company shall not be disclosed to the jury, unless the company has chosen to defend in its own name.

(b) If the owner or operator of any motor vehicle which causes bodily injury or property damage to an insured under this part is unknown and if such insured satisfies all of the requirements of §56-7-12\_\_(E), the insured shall issue a John Doe summons and complaint in a court of record or a John Doe summons warrant in general sessions court against the unknown owner and/or operator in order to come within the coverage of his uninsured motorist policy. If the uninsured motorist's identity and whereabouts is discovered during the pendency of the proceeding, the provisions of T.C.A. §56-7-12\_\_(D) shall govern the proper course of action following such discovery.

(c) An uninsured motorist policy shall not require arbitration of any claim arising thereunder nor shall the insured be restricted or prevented in any manner from employing legal counsel or instituting legal proceedings.

(d) In the event that the original service of process and subsequent alias process against the uninsured motorist, which was issued to his last known address, is returned by the sheriff or other process server marked, "Not to be found in my county," or words to that effect; or if service of process is being made upon the secretary of state for a nonresident uninsured motorist and the registered notice to the last known address is returned without service on the uninsured motorist, the service of process against the uninsured motorist carrier shall be sufficient. The insured, may, by notice only to the court and the insurer, elect to proceed against the insurer only and upon said election, the insurer will proceed as if it is the only defendant in the case. However, such insurer may keep said action current against the uninsured motorist by issue of process and

in the event the uninsured motorist's whereabouts are discovered during the pendency of the proceedings, an alias process may issue by any party against the uninsured motorist. In such a case, the uninsured motorist shall be allowed a reasonable time within which to plead to the original process and then the case may proceed against the uninsured motorist as if such motorist were served with process in the first instance.

(e) When the owner and/or operator of the uninsured motor vehicle is represented by counsel, and the insurance company providing uninsured motorist coverage has chosen to defend in its own name, counsel for the uninsured motorist carrier shall participate in the defense, with all the rights afforded any other party defendant. However, if the uninsured motorist carrier chooses to defend in the name of the owner or operator of the uninsured motorist vehicle, and the uninsured motorist is also represented by legal counsel, the counsel for the uninsured motorists shall be designated lead counsel and have the right to control the conduct of the trial, unless the uninsured motorist and insurance carrier agree otherwise. The existence of the insurance company as a named defendant, shall only be disclosed to the jury, if the insurance company or companies have elected to defend the cause of action solely in the name of the insurance company.

(f) If the uninsured motorist carrier elects to proceed in its own name, the company shall be entitled to present witnesses in its own behalf, examine and cross-examine witnesses, and shall be entitled to peremptory challenges as provided by law.

(g) In the event the uninsured motorist carrier asserts any coverage, or policy defenses, the company shall be required to assert those defenses in the answer filed by the company. If coverage or policy defenses are raised, the court

shall, upon request of any party, be required to sever the trial of such defenses from the original tort action. The resolution of any such defenses may be tried, in the discretion of the court, either before or after a judgment rendered in the original tort action. In no event shall the jury be told the amount of uninsured motorist coverage available in the tort action.

(h) Upon filing an answer, the uninsured motorist carrier or carriers shall disclose on the record the amount of uninsured motorist coverage available under the subject policy or policies. After disclosure, any party may discover under the provisions of Rule 26 of the Tennessee Rules of Civil Procedure from the defendant or defendants' liability insurance carriers, whether the liability insurance coverage available is equal to or greater than the disclosed uninsured motorist coverage and if either policy and/or coverage defenses are claimed. Upon determination of the above stated information, any party may file a motion for a conditional release of the uninsured motorist carrier. The uninsured motorist carrier or carriers may be conditionally released from the cause and shall remain without obligation so long as the defendant continues to have sufficient insurance coverage to assure that the uninsured or underinsured provisions of this Act do not apply. In the event the liability insurance carrier or carriers' become insolvent or otherwise cause the defendant or defendants to be without sufficient insurance coverage, the injured party may, upon proper motion, renew the cause against the uninsured motorist carrier or carriers. Information concerning insurance coverage obtained under this section shall not be disclosed to the jury that tries the tort action.

SECTION 2.. This act shall take effect upon becoming a law, the public welfare requiring it.

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